IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1343 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUTABUDDIN G SHAIKH

Versus

KARAMSHIBHAI BHURABHAI

Appearance:

MR MG NAGARKAR for Petitioner

MR RR TRIVEDI for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/06/2000

ORAL JUDGEMENT

#. This acquittal appeal arises from the impugned judgment and order of the acquittal dated 30.4.1983 rendered by the learned Metropolitan Magistrate, Court

No.6, Ahmedabad in Criminal Case No.65/82. It appears from the impugned judgment that, the accused was dealing in sale of milk. When he was proceeding near Ambawadi cross road at around 5.45 in the morning on 10.4.1982, the complainant purchased the sample milk from the accused as per the particulars set out in the complaint. After following necessary procedure, he prepared three samples of the milk so purchased by him from the accused. When one of the samples was sent for analysis to the Public Analyst, it disclosed 1.3 % less milk solid not fat and 1.7 % more milk fat. The opinion was that the sample of milk did not conform to the standard laid down under the Prevention of Food Adulteration Rules, 1955 ("Rules" for short). It appears that, the accused got another sample examined at the Central Food Laboratory and the opinion Exh.2 from the Central Food Laboratory also says about similar adulteration but speaking about variation in percentage of solid not fat in the milk. The milk solid not fat is less by .8 % than the required standard. The learned Magistrate, however, upon appreciation of the evidence came to the conclusion that, addition of formalin in the milk was not proved to be of the required strength of 40 % and the case was covered under the settled law so far as this State is concerned. He, therefore, acquitted the accused of the offence punishable under section 7 read with Section 16(1) (L) of the Prevention of Food Adulteration Act, 1954 ("Act' for short).

#. When this appeal came up for final hearing, Mr.Nagarkar, learned advocate appearing for the appellant has submitted that, the question involved in this appeal is covered by the Full Bench's decision of this court in the case of B.M.Darji Vs. Biharilal Karulal (1984 GLH, 394). The Full Bench has observed in para 19 as under.:

"A resume of the above discussion could profitably be summarised thus :

(1) Rule 20 of the Prevention of Food Adulteration Rules, 1955 gives clear indication by reference to the addition being of `drops' and the strength being `about' 40 per cent that there is no scope for a plea of strict compliance with that rule;

(2) The object of Rule 20 is to preserve the sample in a condition fit for analysis and if the public analyst is in a position to analyse the sample and certify in Form III it would be

evident that the sample was in a form fit to be analysed;

(3) If the accused nevertheless challenges the result of analysis it is for him to adduce evidence that the statement of the public analyst that the sample was in a condition fit for analysis is not correct;

(4) There is a presumption of regularity in regard to the acts of the Food Inspector provided the broad details of the requirements are proved by the Food Inspector;

(5) Unless otherwise challenged the failure to mention the addition of the requisite quantity of formalin may not by itself be fatal to the prosecution;

(6) Rule 20 provides for addition of a quantity of formalin necessary to preserve the sample for a reasonably long period and therefore the consequence of nonaddition or substantial deficiency in addition of formalin will depend to a great extent upon many other factors such as the time taken between collection and analysis of the sample, and the conditions under which the sample was kept in the meanwhile."

It also observed in para 21 as under.:

"We now answer the question referred to us thus:
As regards the letter part of the question the evident answer is that mere assertion on the strength of the label pasted on the bottle may not by itself be sufficient to prove the addition of formalin. But it is not necessary for the Food Inspector to lead independent evidence that the formalin which he added had 40 per cent strength. If he speaks on the addition of formalin that would be evidence for reasons we have indicated earlier."

It may be noted from the aforesaid decision of the Full Bench that the label pasted on the bottle of formalin contained the note of the strength of 40 %, whereas insofar as the facts of the present case are concerned, label contained strength to be around 37 to 40%. To this Mr.Nagarkar's submission is that, the report of the

Central Food Laboratory indicates that the sample milk sent for examination was fit for analysis, and therefore, a note with regard to the percentage of formalin to the extent 37 to 40 % will have little effect on the merits of the present case which is required to be considered in the light of the aforesaid Full Bench's decision.

#. In reply, Mr.Trivedi, learned advocate for the accused placed reliance upon the decision of this court in the case of Arvindkumar Trikamlal Raval Vs. Ratilal Hemji (1995 Criminal Law Reporter (Gujarat) 11), where this court considering the aforesaid Full Bench's decision held that, applicability of the said Full Bench's decision would be prospective and not retrospective. The learned Single Judge of this court has, thus observed from consideration of number of decisions of the Apex Court and this Court: "the facts, therefore, would justify the acceptance of the Doctrine of Prospective Overruling. The question as to whether in fact the recognition of the doctrine is called for should be answered with the assistance of the abovesaid pronouncement on which the learned Counsel for the respondent No.1 has placed reliance. The compactus of the decisions is in favour of the respondent accused. It is thus clear that the Doctrine of Prospective Overruling which is canvassed by the learned Counsel for the respondent-accused requires to be recognised. If this is once done, the consequences are not unknown. As done in case of Food Inspector, Calicut Corporation (supra) the order of acquittal passed by the Court below cannot be set aside, but the respondent No.1 herein should be held only technically guilty. The appeal shall have to be allowed for this limited purpose only."

#. Now, in the present case also, the sample was taken on 10.4.1982 and the trial court rendered acquittal on 30.4.1983. The decision of the Full Bench was rendered on 20.4.1984. It would, therefore, be clear that the view taken by the learned Single Judge of this court speaking about prospective overruling will hold good. In this respect Mr.Nagarkar submitted that this court is not to enter into the concept of prospective overruling and the decision of the learned Single Judge referred to by the learned advocate for the accused is pending consideration before the Apex Court. This last submission of Mr.Nagarkar cannot be accepted, particularly, bearing in mind the facts of the present case. So long as the view taken by this court with regard to the prospective overruling stands, the present appeal cannot be entertained, particularly, bearing in mind the peculiar facts with regard to trivial difference

in the percentage of milk sold not fat as noted above.

#. In the above view of the matter, this appeal is dismissed.

(M.S.Parikh,J.)
(pathan)